

1 STATE OF TENNESSEE
2 DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
3 PREVAILING WAGE COMMISSION MEETING
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10 August 14, 2018
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17 ORIGINAL
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23 CASSANDRA M. BEILING, LCR# 371
24 STONE & GEORGE COURT REPORTING
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Page 2

1 APPEARANCES:
 2 Commissioner Burns Phillips, Chairman
 3 Commissioner Wayburn Crabtree, TDOT Designee
 4 Ann McGauran, State Architect
 Tennessee Department of Treasury
 5
 R. T. Summers, Industry Representative
 6 Summers-Taylor, Inc. Elizabethton, Tennessee
 7 Stephen Wright, Industry Representative
 Wright Brothers Construction
 8
 Dan Bailey, Legal Counsel
 9
 Kim Y. Jefferson, Administrator
 10
 Lynn Kirby, Board Secretary
 11
 Jan Caudill, Administrative Assistant
 12
 Carolyn Sherrod, Administrative Services Manager
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2 CHAIRMAN PHILLIPS: So we're going
 3 to call the prevailing wages commission meeting to
 4 order.
 5 The first thing we're going to do is
 6 have everybody in the room introduce themselves
 7 for the benefit of our court reporter.
 8 MS. XIXIS: Tia Xixis, legislative
 9 liaison for the Tennessee Department of Labor and
 10 Workforce Development.
 11 MR. STARWALT: Kent Starwalt,
 12 Tennessee Road Builders Association.
 13 MS. KELSEY: Melinda Kelsey, chief
 14 of staff, Department of Labor and Workforce
 15 Development.
 16 MS. PATE: Esther Pate, guest of
 17 the court reporter.
 18 MS. PAIGE: Ebony Paige, WRC, ASA3.
 19 MR. NEALY: Kenneth Nealy, labor
 20 standards director.
 21 MS. SHERROD: Carolyn Sherrod,
 22 administrative services manager, labor standards.
 23 MS. CAUDILL: Jan Caudill, ASA1,
 24 Labor Standards.
 25 MR. BAILEY: Dan Bailey, legal

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AGENDA

2 I. Call Meeting to Order
 3 II. Introductions and Announcements
 4 III. Adoption of Agenda
 5 IV. Approval of November 30, 2017 and
 May 21, 2018 Meeting Minutes
 6
 7 V. Labor Standards Unit's Reports
 8 * Carolyn Sherrod - Administrative Process
 9 * Jan Caudill - 2018 Prevailing Wage
 Determination/Survey & Rates
 10 * Kenneth Nealy - Investigative Process
 11 VI. Old Business - none
 12 VII. New Business
 * Review and approve revisions to 2018
 Prevailing Wage Survey Letter and Form
 * Tennessee Rules
 13
 14 VIII. Open Discussion Items:
 15 IX: Announcement of Next Meeting - November 16,
 2018 at 1:30pm. (Additional Meeting Date
 for 2018: Thursday, November 29th at 1:30pm)
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 17 X. Adjournment
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1 counsel, the Tennessee Department of Labor.
 2 MS. JEFFERSON: Kim Jefferson,
 3 assistant commissioner, Tennessee Department of
 4 Labor.
 5 MS. KIRBY: Lynn Kirby, board
 6 secretary, ASA3.
 7 MR. SUMMERS: Rab Summers,
 8 Summers-Taylor, Incorporated. Commissioner.
 9 CHAIRMAN PHILLIPS: Burns Phillips,
 10 commissioner of the Department of Labor and
 11 Workforce Development.
 12 MR. WRIGHT: Steve Wright with
 13 Wright Brothers Construction Company,
 14 commissioner.
 15 MR. CRABTREE: Wayburn Crabtree. I
 16 represent the commissioner of transportation.
 17 MS. MCGAURAN: Ann McGauran, state
 18 architect, commissioner.
 19 CHAIRMAN PHILLIPS: Okay. I need
 20 to make the traditional announcement. In the
 21 event of an emergency or natural disaster,
 22 security personnel will take attendees to a safe
 23 place in the building or direct them to exit the
 24 building on the Rosa Park side.
 25 Are we ready to move forward?

<p style="text-align: right;">Page 6</p> <p>1 MS. JEFFERSON: Yes, sir.</p> <p>2 CHAIRMAN PHILLIPS: So the first</p> <p>3 order is to adopt the agenda. Are there any</p> <p>4 corrections to the agenda? Each of you should</p> <p>5 have received the agenda.</p> <p>6 MR. WRIGHT: I would move for</p> <p>7 acceptance.</p> <p>8 MS. GAURAN: Second.</p> <p>9 CHAIRMAN PHILLIPS: Any discussion?</p> <p>10 (No verbal response.)</p> <p>11 CHAIRMAN PHILLIPS: Those in favor?</p> <p>12 (Affirmative response.)</p> <p>13 CHAIRMAN PHILLIPS: Motion carries.</p> <p>14 The second item on the agenda is the</p> <p>15 approval of the November 30th, 2017 and May 21st,</p> <p>16 2018 meeting minutes. Are there any corrections?</p> <p>17 (No verbal response.)</p> <p>18 CHAIRMAN PHILLIPS: If not, is</p> <p>19 there a motion to approve?</p> <p>20 MS. GAURAN: I move for approval.</p> <p>21 CHAIRMAN PHILLIPS: So moved.</p> <p>22 MR. CRABTREE: Second.</p> <p>23 CHAIRMAN PHILLIPS: Discussion?</p> <p>24 (No verbal response.)</p> <p>25 CHAIRMAN PHILLIPS: All in favor?</p>	<p style="text-align: right;">Page 7</p> <p>1 (Affirmative response.)</p> <p>2 CHAIRMAN PHILLIPS: Motion carries.</p> <p>3 And next we'll have the reports from</p> <p>4 the Labor Standards Unit. And first will be</p> <p>5 Carolyn.</p> <p>6 MS. SHERROD: Good afternoon and</p> <p>7 welcome.</p> <p>8 CHAIRMAN PHILLIPS: Hi, Carolyn.</p> <p>9 MS. SHERROD: I just want to give</p> <p>10 you a brief report to bring you up to date of what</p> <p>11 has transpired since we met in May. Just a little</p> <p>12 overview.</p> <p>13 In late June, the administrative</p> <p>14 staff got to work revising the Labor Standards</p> <p>15 Unit's SOPs, beginning with the prevailing wage.</p> <p>16 Our SOPs encompass all parts of the processes that</p> <p>17 are necessary to meet the unit's policies with</p> <p>18 respect to reporting for both any inspectors and</p> <p>19 administrative personnel.</p> <p>20 We are happy to announce that the</p> <p>21 prevailing wage SOP revision was completed in mid</p> <p>22 July.</p> <p>23 Preparedness for the prevailing wage</p> <p>24 season requires time and attention to detail.</p> <p>25 Also, in mid July, the administrative staff met</p>
<p style="text-align: right;">Page 8</p> <p>1 with the department's IT division to review and</p> <p>2 revise the 2018 survey letter and survey form,</p> <p>3 which you have before you for your review and</p> <p>4 approval.</p> <p>5 We have met with the legislative</p> <p>6 auditors on several occasions, at which time they</p> <p>7 provided suggestions that enabled us to not only</p> <p>8 move the prevailing wage program forward, but to</p> <p>9 help us better educate the public and provide</p> <p>10 quality customer service to our clients.</p> <p>11 You may have noticed that you</p> <p>12 received a notification of today's meeting some</p> <p>13 30 days ago, 1 week ago, and as late as yesterday,</p> <p>14 or 1 day ago. These electronic notices were</p> <p>15 transmitted to you by way of the department's</p> <p>16 MailChimp component.</p> <p>17 In previous years, we've only sent</p> <p>18 one prevailing wage survey and survey letter on</p> <p>19 one single occurrence. As a result of our audit</p> <p>20 meetings, another process that we are excited</p> <p>21 about for this year would be to utilize MailChimp</p> <p>22 to transmit a remainder notice. This notification</p> <p>23 will go out to all interested contractors,</p> <p>24 encouraging their participation in the survey.</p> <p>25 And the reminder notice will be transmitted around</p>	<p style="text-align: right;">Page 9</p> <p>1 15 days before the survey deadline.</p> <p>2 And just a little bit of metrics, a few</p> <p>3 metrics, as I close my presentation. Since</p> <p>4 July 1st, the administrative personnel has</p> <p>5 received a total of 39 starting notices and</p> <p>6 8 completion notices on construction projects. Of</p> <p>7 these notices, only two were projects for which we</p> <p>8 have jurisdiction.</p> <p>9 But we just wanted to give you that</p> <p>10 little update of what the administrative personnel</p> <p>11 and administrative staff is doing. Thank you.</p> <p>12 CHAIRMAN PHILLIPS: Thank you,</p> <p>13 Carolyn.</p> <p>14 Any questions about the</p> <p>15 administrative process report?</p> <p>16 (No verbal response.)</p> <p>17 MS. SHERROD: Thank you.</p> <p>18 CHAIRMAN PHILLIPS: Thank you.</p> <p>19 Jan, do you want to speak to the</p> <p>20 survey and rates?</p> <p>21 MS. CAUDILL: Good afternoon. We</p> <p>22 have received the TDOT mailing list from</p> <p>23 Mr. Crabtree, and formatting has been approved by</p> <p>24 our IT department. This year we have 724</p> <p>25 employers on the mailing list with all but three</p>

<p style="text-align: right;">Page 10</p> <p>1 of them having email addresses. Once the 2 prevailing wage database has been cleared, this 3 list will be uploaded into the system in 4 preparation for sending out this year's survey 5 forms.</p> <p>6 Compared to last year, we sent out 7 735 surveys. 718 of those were emailed; 17 were 8 mailed. And of that number, 132 employees 9 responded, with 82 of them responding with actual 10 project data, which left us with a project 11 response, including data, overall, of 12 11.1 percent.</p> <p>13 And then over the next several weeks, 14 we'll be testing the system to ensure that the 15 administrative and employer sides both are 16 operating properly. Once this is confirmed, we 17 will send out the letters and surveys in the month 18 of September. If, by any chance, the surveys come 19 back as an invalid address, a request will be made 20 to the employer for a corrected address and the 21 emails, or mailings will be re-sent.</p> <p>22 CHAIRMAN PHILLIPS: Great. Thank 23 you, Jan.</p> <p>24 Any questions about Jan's report? 25 (No verbal response.)</p>	<p style="text-align: right;">Page 11</p> <p>1 CHAIRMAN PHILLIPS: Kenneth, you're 2 up.</p> <p>3 MR. NEALY: Good afternoon. My 4 name is Kenneth Nealy, and I will be speaking 5 about wage rates submitted that are lower than the 6 current rate. The Labor Standards Unit has added 7 a "date project awarded" request line to the 8 prevailing wage survey form.</p> <p>9 This date project awarded information 10 will assist the Labor Standards Unit in 11 determining why wage rates being paid for a 12 particular project is lower than the current rate.</p> <p>13 If the company was awarded a state 14 highway construction project in the year prior to 15 the current year, and the project is still in 16 progress, the rate may be lower than the current 17 rate. The Labor Standards Unit will obtain proper 18 documentation from the companies to justify those 19 rates. And we will maintain those in a separate 20 file based on year.</p> <p>21 In the event that a contractor isn't 22 paid in the proper prevailing wage rate, the Labor 23 Standards Unit will notify the state-contracted 24 agency.</p> <p>25 And some statistics for the year</p>
<p style="text-align: right;">Page 12</p> <p>1 '18-'19 schedule and the ten precon meetings that 2 have been scheduled. One was scheduled and one 3 was attended. Zero companies are reported to the 4 state contract agency as of this date.</p> <p>5 And that concludes my presentation.</p> <p>6 CHAIRMAN PHILLIPS: Thank you, 7 Kenneth.</p> <p>8 Any questions about the investigative 9 process? 10 (No verbal response.)</p> <p>11 CHAIRMAN PHILLIPS: All right. 12 Let's move on to old business. There is no old 13 business.</p> <p>14 New business, there are a couple of 15 areas. First, we need to review and approve 16 revisions to the 2018 prevailing wage survey list, 17 letter and survey form, all of which we received.</p> <p>18 Has everyone had a chance to look it 19 over, and if so, I'll ask for a motion to approve.</p> <p>20 MS. MCGAURAN: I'll move to 21 approve.</p> <p>22 MR. WRIGHT: Second.</p> <p>23 CHAIRMAN PHILLIPS: Okay. Any 24 discussion? 25 (No verbal response.)</p>	<p style="text-align: right;">Page 13</p> <p>1 CHAIRMAN PHILLIPS: Those in favor? 2 (Affirmative response.)</p> <p>3 CHAIRMAN PHILLIPS: Motion carries. 4 Now we need to discuss the Tennessee 5 prevailing wage rules proposed changes. And we 6 have several. And the first is a proposal to 7 delete "Ditch Paver Machine Operator" from 8 Established Crafts, Rule 0800-03-02-.02 (ix). 9 Wayburn and Rab, do you-all want to 10 comment on that?</p> <p>11 MR. CRABTREE: I think it's 12 obsolete.</p> <p>13 MR. SUMMERS: I agree.</p> <p>14 CHAIRMAN PHILLIPS: Okay. Is there 15 a motion to delete?</p> <p>16 MR. WRIGHT: So moved.</p> <p>17 MR. SUMMERS: Second.</p> <p>18 CHAIRMAN PHILLIPS: Discussion? 19 Any discussion? 20 (No verbal response.)</p> <p>21 CHAIRMAN PHILLIPS: If there's no 22 discussion, then those in favor, say aye. 23 (Affirmative response.)</p> <p>24 CHAIRMAN PHILLIPS: Motion carries. 25 Next, we have a proposal to add</p>

<p style="text-align: right;">Page 14</p> <p>1 concrete barrier rail, transfer machine operator 2 to established crafts. Rule 0800-03-02-.02, Alpha 3 Order. And the proposed definition is, "A barrier 4 transfer machine is a heavy vehicle used to 5 transfer concrete lane dividers which are used to 6 relieve traffic congestion during rush hours. It 7 is also used, temporarily, during construction 8 work." 9 Do we have a motion to add that 10 classification and new definition? 11 MR. SUMMERS: I have a question. 12 CHAIRMAN PHILLIPS: Certainly. 13 MR. SUMMERS: Would that be a 14 stand-alone craft? It wouldn't be part of one of 15 the existing A, B, C, or D, machine operators? 16 MR. BAILEY: That was my question, 17 where to put it. 18 MR. SUMMERS: I mean, I think if it 19 was a stand-alone craft, I think the chances of us 20 getting sufficient data to really promulgate it 21 properly are slim. I mean, it's only on a big 22 interstate paving job when there's lane closures 23 and a lot of miles of barrier rail that someone 24 would use that, because it's a fairly expensive 25 machine.</p>	<p style="text-align: right;">Page 15</p> <p>1 So if we were able to put it as an 2 additional classification under one of the 3 equipment operator categories, I think that we 4 would be more likely to have a proper wage rate. 5 MR. CRABTREE: Sounds reasonable to 6 me. It looks like something that needed to be 7 addressed one way or the other. 8 MR. SUMMERS: I agree. 9 MR. WRIGHT: Somebody has penciled 10 it in as Class D operator. 11 MR. BAILEY: Yeah. What was sent 12 out to you shows it penciled in under Class D 13 operator. And I noticed that when it was sent 14 out, because I had thought that we would add it as 15 a separate craft on, like, page 20 before Concrete 16 Finisher, is what I was thinking. But I was 17 wanting to get y'all's feedback as to where you 18 thought it belonged. 19 MR. WRIGHT: It looks good to me. 20 MR. BAILEY: I mean, either way, 21 I've got to renumber some paragraphs, so it 22 doesn't matter if one way you renumber them, more 23 than another. That's not what the problem is. It 24 just needs to go where you-all think is the 25 best-suited slot.</p>
<p style="text-align: right;">Page 16</p> <p>1 CHAIRMAN PHILLIPS: So it should be 2 an additional? Is that what we're saying? 3 MS. MCGAURAN: Or should it be part 4 of the Class D operator. I think that's the 5 question. 6 MR. SUMMERS: It would either be C 7 or D, I think. I was just trying think about what 8 it's function, the size of it -- it's similar, 9 Wayburn, to a material transfer device, you know, 10 in front a paver or maybe a milling machine. 11 MR. BAILEY: Well, that sounds more 12 like Class C, what you just said. 13 MR. SUMMERS: Yes, sir. It doesn't 14 make much difference. I think that we could put 15 it in either one. The dollars between the two are 16 not significant, I don't think. I would think 17 it -- I really think it would be -- with the 18 complexity of it, it might possibly be more in 19 Class C than D. Just my opinion. 20 MR. BAILEY: So we would add that 21 as a new paragraph, Roman Numeral VIII, under 22 Class C? 23 MS. MCGAURAN: So I'll move that we 24 add concrete barrier rail transfer machine 25 operator to the Class C operator section.</p>	<p style="text-align: right;">Page 17</p> <p>1 MR. WRIGHT: Second. 2 CHAIRMAN PHILLIPS: So moved and 3 seconded. Any discussion, further discussion? 4 (No verbal response.) 5 CHAIRMAN PHILLIPS: All in favor? 6 (Affirmative response.) 7 CHAIRMAN PHILLIPS: Motion carries. 8 Dan, have you got what you need? 9 MR. BAILEY: Yes, sir. 10 CHAIRMAN PHILLIPS: Next, we have a 11 proposal to change the language from "on the date 12 the bid is advertised" to "on the day preceding 13 the date bids are received," Rule 0800-03-02-.04. 14 Wayburn? 15 MR. CRABTREE: I would like to 16 change that to ten days. I have since read in the 17 literature of the ten-day rule, and I think that 18 would be more appropriate than on the day before. 19 We have the technology to do it on the day before, 20 but my logic may have been a little bit flawed 21 there. When I first thought about that, I 22 thought, well, we're going to have to go by it 23 anyway, so we would have to change every contract 24 that we had the incorrect rate in. 25 I think if we did it within ten days.</p>

<p style="text-align: right;">Page 18</p> <p>1 That's what we give ourselves, from January the 2 1st to January the 11th, so that we would be 3 consistent with it.</p> <p>4 CHAIRMAN PHILLIPS: So how would it 5 read, then?</p> <p>6 MR. CRABTREE: To "ten days 7 preceding the day bids are received."</p> <p>8 CHAIRMAN PHILLIPS: Okay.</p> <p>9 MS. MCGAURAN: So effective ten 10 days to the date the bids are received?</p> <p>11 MR. CRABTREE: "Ten days preceding 12 the day bids are received," yes, ma'am.</p> <p>13 MR. WRIGHT: So you really want to 14 change -- you want to strike "on the date the bid 15 is advertised," and change your suggested language 16 from "on the day" to "ten days prior" or "ten days 17 preceding the date bids are received"; is that 18 correct?</p> <p>19 MR. CRABTREE: Yes.</p> <p>20 CHAIRMAN PHILLIPS: Correct, yes. 21 Then we'll ask for a motion.</p> <p>22 MR. BAILEY: Let me make sure I'm 23 clear on that. We're proposing -- the current 24 language says "on the date the bid is advertised." 25 And we're saying to change that to "ten days..."</p>	<p style="text-align: right;">Page 19</p> <p>1 MS. MCGAURAN: So the -- I would 2 move that the language say "prevailing wage rates 3 that are in effect ten days preceding the date 4 bids are received."</p> <p>5 MR. CRABTREE: Okay. Not 6 advertised.</p> <p>7 MS. MCGAURAN: I'll make that 8 motion.</p> <p>9 MR. WRIGHT: Second.</p> <p>10 CHAIRMAN PHILLIPS: Okay. Any 11 further discussion? 12 (No verbal response.)</p> <p>13 CHAIRMAN PHILLIPS: All in favor? 14 (Affirmative response.)</p> <p>15 CHAIRMAN PHILLIPS: All right. 16 Motion carries.</p> <p>17 Next is a proposal to add "state 18 contract" instead of "contract" in Rule 19 0800-03-02-.01 1(e). 20 Ann? 21 MS. MCGAURAN: It's showing in the 22 document, reading that way, but I just thought it 23 was clearer than just contract in general.</p> <p>24 CHAIRMAN PHILLIPS: Okay. Motion 25 to add?</p>
<p style="text-align: right;">Page 20</p> <p>1 MS. MCGAURAN: I move to add. 2 MR. CRABTREE: Second.</p> <p>3 CHAIRMAN PHILLIPS: Any discussion? 4 (No verbal response.)</p> <p>5 CHAIRMAN PHILLIPS: Those in favor? 6 (Affirmative response.)</p> <p>7 CHAIRMAN PHILLIPS: Okay. Motion 8 carries.</p> <p>9 Next is proposal to decide how to 10 treat crane operator in Rule 11 0800-03-01.02(a)3(ii), less than 20 tons, and 12 Rule 0800-03-01.02(a)4, equal to or greater than 13 20 tons. The rest of the definition language is 14 identical, but these appear to have two different 15 types of crane operators. 16 Ann, that's you again.</p> <p>17 MS. MCGAURAN: What I was referring 18 to is that we have two defined terms in here that 19 are crane operators.</p> <p>20 CHAIRMAN PHILLIPS: Right.</p> <p>21 MS. MCGAURAN: And the defined term 22 is "crane operator," not a crane operator with any 23 clarification. And one is for crane operators 24 with equipment less than 20 tons, and one is for 25 crane operators with equipment equal to or greater</p>	<p style="text-align: right;">Page 21</p> <p>1 than 20 tons. So I was wondering if the 2 definition needed to be modified to say "crane 3 operator," paren, "greater than 20 tons," and 4 "crane operator," paren, "less than 20 tons."</p> <p>5 MR. WRIGHT: Well, I would think 6 that the crane operator that's penciled in in red 7 here, equal to or greater, the proposed number 8, 8 that's a -- is that a stand-alone rate?</p> <p>9 MR. SUMMERS: Equal and greater to 10 is.</p> <p>11 MR. WRIGHT: Okay. Because in my 12 experience, you know, you're talking about big and 13 little cranes. So the heavy crane operators are a 14 very, very special item. You know, a 200-ton 15 crane operator is probably going to be much more 16 expensive than a Class A operator.</p> <p>17 MS. MCGAURAN: I agree. And I'm 18 not changing any of the other language. It's just 19 that if you look at it --</p> <p>20 MR. WRIGHT: Yeah. And you're 21 proposing to make that "less than" --</p> <p>22 MS. MCGAURAN: No. I'm proposing 23 to change what's in parentheses -- what's in the 24 quotes as the term to be descriptive of what 25 you're really defining. So all I am saying is</p>

<p style="text-align: right;">Page 22</p> <p>1 leave them both where they're currently at, but 2 change one of the crane operator terms -- you 3 know, it says "crane operator," and that's in 4 quotes, and that's essentially defining that term. 5 We have that same term being defined 6 two different ways in our document, and so we 7 should --</p> <p>8 MR. BAILEY: And I understand what 9 you're saying, but the one difference is the one 10 crane operator is a subdivision of Class A 11 operator.</p> <p>12 MS. MCGAURAN: Okay.</p> <p>13 MR. BAILEY: And the other crane 14 operator is a stand-alone definition.</p> <p>15 MS. MCGAURAN: And so if legally 16 that's fine -- I just didn't want it to be 17 confusing and people categorize them incorrectly.</p> <p>18 MR. BAILEY: I mean --</p> <p>19 MR. WRIGHT: I mean, agree that the 20 small crane operator -- really, what you're 21 showing the Class A operator would be the 22 smaller-type crane operators. That was probably 23 an appropriate place for that in a Class A 24 operator. 25 This one that's in paragraph 8 would</p>	<p style="text-align: right;">Page 23</p> <p>1 be the large crane operator, which is greater than 2 20 tons. It makes logical sense to me.</p> <p>3 MS. MCGAURAN: I defer.</p> <p>4 MR. BAILEY: I mean, does it ever 5 cause a problem out on the job? I mean, a 6 smaller-crane operator knows they're a Class A 7 operator.</p> <p>8 MR. SUMMERS: Well, if you look at 9 our survey form and descriptions, under Class A 10 operator, "crane" is not listed. It says 11 "Dragline." But it doesn't say "motor crane." It 12 just says "Backhoe, end loader, Motor Patrol 13 Finish, Pile Driver, Dragline." 14 It should say "crane less than 15 20 tons."</p> <p>16 MR. BAILEY: On the survey form?</p> <p>17 MR. SUMMERS: Yes, sir. I think 18 that's what we intend. Because we have, you know, 19 parentheses and in bold letters "less than 20 20 tons," but it actually doesn't say "crane 21 operator." 22 MR. WRIGHT: Well, Rab, are you in 23 agreement that a big crane operator is probably 24 going to be more expensive than your average 25 Class A --</p>
<p style="text-align: right;">Page 24</p> <p>1 MR. SUMMERS: Of course. Of 2 course.</p> <p>3 MS. MCGAURAN: And maybe it would 4 be as simple as saying, on our survey form, when 5 we say "crane operator," defining that that's for 6 those crane operators that are greater than 7 20 tons, and that the other crane operator should 8 be up under Class A. 9 I just didn't want the Class A crane 10 operators being accounted in your larger, more 11 specialized category. When people were reporting 12 was what I was concerned about.</p> <p>13 MR. WRIGHT: I agree with you. And 14 after we make these changes, I would think some of 15 these -- that form we just approved may need to be 16 revised, honestly.</p> <p>17 MR. BAILEY: Sounds like it.</p> <p>18 MR. SUMMERS: Jan, do you see what 19 I'm talking about in that, just in the language 20 there?</p> <p>21 MS. CAUDILL: I do. Right at the 22 back of Class A operators, it has everything but a 23 crane operator. And then it says "less than 24 20 tons." 25 MR. SUMMERS: Yeah. So it should</p>	<p style="text-align: right;">Page 25</p> <p>1 be "crane operator, less than 20 tons." 2 MS. CAUDILL: So add "crane 3 operator, less than 20 tons." 4 MR. BAILEY: What form were you 5 referring to? 6 MR. SUMMERS: The description of 7 the classification. 8 CHAIRMAN PHILLIPS: Rab, are you 9 talking about this one, the one that's in here? 10 MR. SUMMERS: This one right here. 11 MR. WRIGHT: Dan, it's this one. 12 MR. BAILEY: Yeah, I got it. 13 MS. CAUDILL: Do you want to change 14 25 to say "crane operator," then? 15 MR. WRIGHT: So Class 03 should add 16 "crane operator, less than 20 tons." And then 17 there should be a crane operator down here at the 18 bottom. It already says "equal to or greater than 19 20 tons." 20 MR. SUMMERS: 25 is correct. 21 MS. CAUDILL: As just "crane" -- or 22 "crane operator"? 23 MR. BAILEY: Right. 24 MR. WRIGHT: 25 is correct and 3 is 25 missing --</p>

<p style="text-align: right;">Page 26</p> <p>1 MR. BAILEY: There is less than 2 20 tons under Class A, but it doesn't say "crane 3 operator." 4 MR. WRIGHT: It says "dragline." 5 CHAIRMAN PHILLIPS: Yeah, 6 "dragline." 7 MR. BAILEY: Well, it looks like it 8 says "dragline," period, and then it says "less 9 than 20 tons." So we just need to add "crane 10 operator" -- 11 MR. WRIGHT: Does that mean 12 everything less than 20 tons? 13 CHAIRMAN PHILLIPS: Let's don't 14 complicate it any more than it is. 15 MR. WRIGHT: I've got to practice 16 for a meeting we're going to where we wordsmith 17 for two days. 18 MS. MCGAURAN: And potentially, on 19 page 20, if we just put the word "large-crane 20 operator," and then "crane operator," that might 21 distinguish those two different kinds. I don't 22 know. 23 MR. WRIGHT: That would probably 24 save three questions a year in my office. 25 MS. MCGAURAN: So I'm going to move</p>	<p style="text-align: right;">Page 27</p> <p>1 that we change the term in 8 for the "equal to or 2 greater than 20 tons to large-crane operator." 3 CHAIRMAN PHILLIPS: So you've made 4 the motion. Is there a second? 5 MR. CRABTREE: Second. 6 CHAIRMAN PHILLIPS: Any discussion? 7 (No verbal response.) 8 CHAIRMAN PHILLIPS: All in favor. 9 (Affirmative response.) 10 CHAIRMAN PHILLIPS: Okay. Motion 11 carries. 12 Next is a proposal to change the 13 language from "Prevailing Wage Act of 1975" to 14 "Prevailing Wage Act for State Highway 15 Construction Projects," Rule 0800-03-01-.03. 16 Motion to change the language? 17 MR. WRIGHT: So moved. 18 MR. SUMMERS: Second. 19 CHAIRMAN PHILLIPS: Any discussion? 20 (No verbal response.) 21 CHAIRMAN PHILLIPS: All in favor? 22 (Affirmative response.) 23 CHAIRMAN PHILLIPS: Motion carries. 24 MR. SUMMERS: Just a question. 25 When the Tennessee Aeronautics Commission with the</p>
<p style="text-align: right;">Page 28</p> <p>1 Department of Transportation lets projects, they 2 also use this same prevailing wage. 3 MR. CRABTREE: What's the question? 4 MR. SUMMERS: Well, your 5 aeronautics division uses this same prevailing 6 wage when they let a project on one of the smaller 7 airports, and even the larger ones that they're 8 involved with. We're not confusing things on 9 that, are we? Because instead of State Highway 10 Construction Projects, those are still Department 11 of Transportation projects, aren't they, since -- 12 MR. CRABTREE: They are, yes, sir. 13 MR. SUMMERS: -- since they're a 14 part of the Department of Transportation. 15 Prevailing wage should say Tennessee Department of 16 Transportation Projects? 17 MR. CRABTREE: I don't know how 18 many contracts our aeronautics division lets 19 themselves. I know they probably do, but more 20 times than not, they give the money out, just like 21 our locally managed projects, and the local agency 22 lets for the airport. I don't know how many times 23 we do it one way and how many times we do it 24 another. And maybe that doesn't matter. 25 MR. SUMMERS: But you still require</p>	<p style="text-align: right;">Page 29</p> <p>1 them to use a Tennessee prevailing wage. 2 MR. CRABTREE: If our aeronautics 3 division lets the contract, yes, sir. 4 MR. SUMMERS: But even when you 5 give it to the locals, don't you -- 6 MR. CRABTREE: No, sir. 7 MR. SUMMERS: Doesn't the wage 8 follow the money? 9 CHAIRMAN PHILLIPS: No. We had 10 this discussion last year. 11 MR. CRABTREE: Last year. What we 12 have decided is if local agencies want to use the 13 prevailing wage rates, then they may. However, 14 we're not going to enforce them, and from what I 15 understand from Commissioner Phillips, that the 16 Department of Labor is not going to enforce them 17 either. So the only enforcement they have is 18 their contractual ability to enforce this. So 19 they do it at their own risk. 20 MR. SUMMERS: Even if the money 21 flows through TDOT, that doesn't matter to you. 22 MR. CRABTREE: Doesn't matter. 23 That's what our general counsel has determined and 24 that's what our deputy commissioner has agreed to, 25 so that's what we're doing.</p>

<p style="text-align: right;">Page 30</p> <p>1 MR. SUMMERS: Okay.</p> <p>2 CHAIRMAN PHILLIPS: And we did</p> <p>3 discuss this last year.</p> <p>4 MS. MCGAURAN: Yes, we did.</p> <p>5 MR. WRIGHT: I mean, because</p> <p>6 this -- the position is consistent.</p> <p>7 MR. SUMMERS: Okay. I'll remember</p> <p>8 that now.</p> <p>9 CHAIRMAN PHILLIPS: Okay. So next,</p> <p>10 Rab, this is your proposal to define highway</p> <p>11 contractor, public highway, and state construction</p> <p>12 project, Rule 0800-03-02-.01 1 (f), (g), and (h)</p> <p>13 using the following language: "Any state agency</p> <p>14 or by any municipality, county, or other political</p> <p>15 subdivision, as defined in Rule 0800-03-02-.03."</p> <p>16 MR. SUMMERS: I guess this is the</p> <p>17 same -- pretty much, it's the same issue. I mean,</p> <p>18 we have TDOT money going to counties, to cities.</p> <p>19 I thought they would be required to use the</p> <p>20 prevailing wage, but just what the general counsel</p> <p>21 has said, that they're not?</p> <p>22 MR. CRABTREE: That's correct. Our</p> <p>23 general counsel says they're not. And I think we</p> <p>24 may have even voted on it last year here and</p> <p>25 agreed to that position.</p>	<p style="text-align: right;">Page 31</p> <p>1 CHAIRMAN PHILLIPS: Yes.</p> <p>2 MR. SUMMERS: Okay.</p> <p>3 MR. CRABTREE: Now, whether that's</p> <p>4 the way it should be or not, I can't say. But</p> <p>5 based on our reading, our general counsel's</p> <p>6 reading of the statute, we believe that's what it</p> <p>7 says.</p> <p>8 MR. SUMMERS: Is he talking about</p> <p>9 the Prevailing Wage Act Statute or --</p> <p>10 MR. CRABTREE: Yes. As amended.</p> <p>11 MR. SUMMERS: -- a bunch of</p> <p>12 other -- it's in the prevailing wage portion.</p> <p>13 Okay.</p> <p>14 MR. CRABTREE: Yes.</p> <p>15 MR. SUMMERS: Okay. That's good.</p> <p>16 CHAIRMAN PHILLIPS: So are we</p> <p>17 making a motion?</p> <p>18 MR. SUMMERS: I'm being quiet.</p> <p>19 MR. BAILEY: So...</p> <p>20 CHAIRMAN PHILLIPS: Dan?</p> <p>21 MR. BAILEY: I was just looking at</p> <p>22 an email that I had sent. It was to Ms. Jefferson</p> <p>23 and Chance. Which I'm making the argument that</p> <p>24 based on the definitions that it would apply -- an</p> <p>25 argument could be made that it does apply in this</p>
<p style="text-align: right;">Page 32</p> <p>1 municipality or applicable subdivisions of the</p> <p>2 state that is funded in whole or part -- let me</p> <p>3 just read it to you. It says, "Kim, in response</p> <p>4 to Mr. Crabtree's concern regarding whether the</p> <p>5 Tennessee Department of Labor has authority over a</p> <p>6 municipal project that receives state funding, I</p> <p>7 think that is covered in the definition of 'public</p> <p>8 highway' that I set out in my earlier email about</p> <p>9 airport runways. In that email, I stress the</p> <p>10 underlined portion, but I think Mr. Crabtree's</p> <p>11 concern is addressing the highlighted portion that</p> <p>12 I just did. The public highway" -- and I go</p> <p>13 through the definitions of public highway,</p> <p>14 medians, any street -- "constructed or maintained</p> <p>15 by the state or any municipality or applicable</p> <p>16 subdivision of the state. And that is funded in</p> <p>17 whole or in part by federal or state highway</p> <p>18 funds. State contract means any contract or</p> <p>19 agreement written," blah blah blah, "for the</p> <p>20 performance of work on a state highway</p> <p>21 construction project.</p> <p>22 "And then State highway construction</p> <p>23 project means any construction project for the</p> <p>24 purpose of building or rebuilding or repairing any</p> <p>25 public highway."</p>	<p style="text-align: right;">Page 33</p> <p>1 So if you look at the definitions of</p> <p>2 public highway interacting with state contract and</p> <p>3 state highway construction project, I concluded</p> <p>4 that according to the definitions, our department</p> <p>5 and the prevailing wage commission has</p> <p>6 jurisdiction and authority over all state highway</p> <p>7 construction projects, which includes those</p> <p>8 constructed or maintained by any municipality or</p> <p>9 applicable subdivision in the state of Tennessee</p> <p>10 that is funded in whole or in part with federal or</p> <p>11 state highway funds. I do not think there is</p> <p>12 anything ambiguous about it."</p> <p>13 MR. SUMMERS: So in other words,</p> <p>14 you sort of disagree with the attorney over at the</p> <p>15 Department of Transportation.</p> <p>16 MR. BAILEY: Yeah, I do.</p> <p>17 MR. WRIGHT: Would it be</p> <p>18 appropriate for us to ask that they reconcile</p> <p>19 that?</p> <p>20 MR. CRABTREE: That's what I would</p> <p>21 ask.</p> <p>22 CHAIRMAN PHILLIPS: Yeah. It seems</p> <p>23 the logical thing to do.</p> <p>24 MS. MCGAURAN: So based on this, do</p> <p>25 we want to move to -- couple of things. First, do</p>

<p style="text-align: right;">Page 34</p> <p>1 we want to move to hold on proposal number 6 to 2 change the language?</p> <p>3 CHAIRMAN PHILLIPS: Yes.</p> <p>4 MS. MCGAURAN: I would like to move 5 that we hold on changing the language until the 6 lawyers have a chance to reconcile their opinions.</p> <p>7 CHAIRMAN PHILLIPS: Is there a 8 second?</p> <p>9 MR. WRIGHT: There is a second.</p> <p>10 MR. SUMMERS: You're including 11 proposal 6 and 7, right?</p> <p>12 MS. MCGAURAN: For proposal 6 and 13 7, yes, sir.</p> <p>14 CHAIRMAN PHILLIPS: Any more 15 discussion?</p> <p>16 MR. CRABTREE: I would like to ask 17 a procedural question.</p> <p>18 CHAIRMAN PHILLIPS: Sure.</p> <p>19 MR. CRABTREE: Once this rule is 20 finalized here, the Department of Labor, then it 21 goes to the attorney general's office, and at some 22 point, it goes out for comments; is that correct?</p> <p>23 MR. BAILEY: Well, it will go to 24 the attorney general's office. Well, first of 25 all, the governor's office, then the attorney</p>	<p style="text-align: right;">Page 35</p> <p>1 general's office, for them to review it and 2 approve it. And it depends on which rulemaking 3 path we take. If we take the rulemaking hearing 4 rule path, then there's a meeting where the public 5 can comment on the rules. If you go proposed 6 rulemaking route, then you don't have that, unless 7 somebody objects. And then you've got to go back 8 through the hearing process.</p> <p>9 So it just depends on which route you 10 want to take. If you think there's a lot of 11 people in the public that would want to comment on 12 these rules, then it's best to go that route to 13 begin with.</p> <p>14 But, now, for the most part, these 15 rules aren't really changing anything, other than 16 taking the building portion out and just solely 17 focusing it on state highway construction 18 projects. I mean, it doesn't change much of 19 anything else other than that.</p> <p>20 So I'm saying that only to say that I 21 don't know how much public comment you would get, 22 so I don't know, you know, if going that route is 23 the best route, because it is a longer route.</p> <p>24 MR. CRABTREE: Okay. Thank you.</p> <p>25 CHAIRMAN PHILLIPS: Okay. A motion</p>
<p style="text-align: right;">Page 36</p> <p>1 was made, seconded, and approved.</p> <p>2 MS. MCGAURAN: Did we approve it?</p> <p>3 CHAIRMAN PHILLIPS: Yes, we did.</p> <p>4 MS. MCGAURAN: Okay.</p> <p>5 CHAIRMAN PHILLIPS: And then 6 finally, we have some clean-up language to 7 properly refer to the Commission Department and 8 Labor Standards Unit where appropriate.</p> <p>9 Do you want to speak to that at all?</p> <p>10 MS. JEFFERSON: Yes, sir. That's 11 basically it. Throughout the rules, the rules 12 sometimes refer to the Commission when it should 13 refer to Labor Standards. We just want to clean 14 up all of that language and just make it plain. 15 And that's basically it.</p> <p>16 CHAIRMAN PHILLIPS: And it's just a 17 matter of consistency.</p> <p>18 MS. JEFFERSON: Yes.</p> <p>19 MR. WRIGHT: I had looked through 20 this yesterday, and I have four or five things in 21 these definitions that I think should cleaned up 22 as well. Is this an appropriate time to do that? 23 Or should I submit them in writing or...</p> <p>24 CHAIRMAN PHILLIPS: Sure. Might as 25 well do it now as later.</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. WRIGHT: While we're 2 wordsmithing?</p> <p>3 CHAIRMAN PHILLIPS: Yes.</p> <p>4 MR. WRIGHT: Okay. If you go on 5 page 15 to Class A operator, the description, 6 paragraph 3 on page 15, if you read that 7 description, it lists Motor Patrol -- Tractor, 8 Crawler/Utility -- which is not in Class A. 9 Scraper is not in class A; shovel is not in 10 Class A; and trenching machine is not in Class A. 11 I would think that would be wise to strike those.</p> <p>12 MR. BAILEY: Which ones are those 13 again? I'm sorry.</p> <p>14 MR. WRIGHT: Paragraph 3, Class A 15 operator. Tractor, then it's got in parentheses 16 "Crawler/Utility."</p> <p>17 MR. BAILEY: Okay.</p> <p>18 MR. WRIGHT: Scraper, shovel, or 19 trenching machine; none of those are listed below 20 it. They're in other categories.</p> <p>21 MR. BAILEY: So are you moving 22 those be deleted, then, from that paragraph?</p> <p>23 MR. WRIGHT: Yes, sir. Or I've got 24 a list. We can just make one motion.</p> <p>25 MR. BAILEY: Okay.</p>

<p style="text-align: right;">Page 38</p> <p>1 CHAIRMAN PHILLIPS: Yes.</p> <p>2 MR. WRIGHT: Okay. And then if you</p> <p>3 go to paragraph 3, where it says "End loader</p> <p>4 operator" --</p> <p>5 MR. BAILEY: Yeah.</p> <p>6 MR. WRIGHT: I hadn't heard the</p> <p>7 term "end loader" in 20 years. Have you, Rab?</p> <p>8 Aren't they just really loaders? That's a slang.</p> <p>9 "End loader" is slang, that they're either track</p> <p>10 loader or wheel loaders, by industry definition.</p> <p>11 So I would move to strike the word "end." And</p> <p>12 then I don't think the commission would care</p> <p>13 whether it's on tracks or wheels, I don't believe.</p> <p>14 Rab, is that good?</p> <p>15 MR. SUMMERS: Yes, sir. I don't</p> <p>16 know which end they're talking about.</p> <p>17 MR. WRIGHT: That's kind of where</p> <p>18 I'm at. And we've got some on a list, but I'm not</p> <p>19 sure...</p> <p>20 And then going on to Class B</p> <p>21 operator -- one other thing in paragraph 4, "Motor</p> <p>22 Crane Operator," is this a category we even need,</p> <p>23 considering that we have crane operator well</p> <p>24 defined as above and below 20 tons? Paragraph 4,</p> <p>25 right below it, the next definition below "end</p>	<p style="text-align: right;">Page 39</p> <p>1 loader."</p> <p>2 MR. SUMMERS: We don't recognize</p> <p>3 any difference in a crane operator, of whether</p> <p>4 it's a crawler crane or a motor crane. It's just</p> <p>5 the lifting capacity.</p> <p>6 MR. WRIGHT: It's just a crane. I</p> <p>7 mean, I would suggest that we strike that in</p> <p>8 its entirety.</p> <p>9 MR. BAILEY: Okay.</p> <p>10 MR. WRIGHT: Which means it'd also</p> <p>11 need to be stricken from the --</p> <p>12 MR. BAILEY: Survey form?</p> <p>13 MR. WRIGHT: Yes.</p> <p>14 And then if you go down to Class B</p> <p>15 operator, paragraph 1, bulldozer or push dozer</p> <p>16 operator, I would strike "push dozer."</p> <p>17 MS. MCGAURAN: Would you also,</p> <p>18 under 4, Class B operator, would you strike the</p> <p>19 word "end loader" --</p> <p>20 MR. WRIGHT: Yes, ma'am.</p> <p>21 MS. MCGAURAN: -- from that</p> <p>22 definition?</p> <p>23 MR. WRIGHT: Yes, ma'am.</p> <p>24 MS. MCGAURAN: Okay.</p> <p>25 MR. WRIGHT: Well, actually, it</p>
<p style="text-align: right;">Page 40</p> <p>1 really shouldn't be in Class B at all.</p> <p>2 MS. MCGAURAN: Because it's in</p> <p>3 the --</p> <p>4 MR. WRIGHT: Because it's -- well,</p> <p>5 excuse me. It's less than three yards. Yes, it</p> <p>6 may very well be.</p> <p>7 MR. BAILEY: So strike the word</p> <p>8 "end," then?</p> <p>9 MR. WRIGHT: Yes. Please strike</p> <p>10 the word "end," but the category is probably still</p> <p>11 appropriate.</p> <p>12 MR. BAILEY: Right.</p> <p>13 MR. WRIGHT: And then if you go to</p> <p>14 paragraph 1, I would strike "push dozer."</p> <p>15 MR. BAILEY: Right.</p> <p>16 MR. WRIGHT: If you go to</p> <p>17 paragraph 4 -- Rab, do you own a shovel?</p> <p>18 MR. SUMMERS: We do not.</p> <p>19 MR. WRIGHT: We don't either.</p> <p>20 That's kind of an obsolete machine.</p> <p>21 MR. SUMMERS: I mean, maybe</p> <p>22 somebody does.</p> <p>23 MR. WRIGHT: There may be, but I --</p> <p>24 CHAIRMAN PHILLIPS: I mean, I'm</p> <p>25 sure if you strike it, somebody will have --</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. WRIGHT: I mean, I --</p> <p>2 MR. SUMMERS: It's not --</p> <p>3 MR. WRIGHT: Yeah. It's not</p> <p>4 hurting anything.</p> <p>5 CHAIRMAN PHILLIPS: It's not</p> <p>6 hurting anything to be in there. Sure, as you</p> <p>7 strike it, somebody will have it. And if it's not</p> <p>8 hurting anything, let's just leave it.</p> <p>9 MR. WRIGHT: That sounds good. I</p> <p>10 just thought I would ask the question while I was</p> <p>11 doing this.</p> <p>12 "Tractor operator," the next one,</p> <p>13 paragraph 5, what's that for, Rab?</p> <p>14 MR. SUMMERS: Which one?</p> <p>15 MR. WRIGHT: 5, the next one after</p> <p>16 "shovel operator," the top of page 17.</p> <p>17 CHAIRMAN PHILLIPS: Tractor</p> <p>18 operator?</p> <p>19 MR. SUMMERS: (Reviews document.)</p> <p>20 There is nothing there that a bulldozer operator</p> <p>21 wouldn't cover.</p> <p>22 MR. WRIGHT: I don't --</p> <p>23 MR. SUMMERS: I mean, it's just --</p> <p>24 if a bulldozer operator is going a few feet lower,</p> <p>25 it's still a bulldozer operator.</p>

<p style="text-align: right;">Page 42</p> <p>1 MR. WRIGHT: I would move to strike 2 Number 5.</p> <p>3 MR. CRABTREE: What about our 4 mowers? Is it possible that a ride-away mowing 5 could be using that classification?</p> <p>6 MR. WRIGHT: Well, there's another 7 one in here.</p> <p>8 MR. CRABTREE: You've got another 9 one?</p> <p>10 MR. SUMMERS: Yes, farm tractor.</p> <p>11 MR. WRIGHT: If you go to page -- I 12 marked it. I was trying to figure that out, 13 Rayburn, is what got me on that.</p> <p>14 Okay. It's on page 20, "Tractor 15 Operator, one who operates a rubber tired" --</p> <p>16 MR. SUMMERS: That's not a mower.</p> <p>17 MR. WRIGHT: No, I misspoke.</p> <p>18 MR. SUMMERS: See, I don't know 19 what that guy does.</p> <p>20 MR. WRIGHT: I don't know either. 21 Are you talking about Number 19?</p> <p>22 MR. SUMMERS: Yes, sir. I don't 23 know what that guy does.</p> <p>24 MR. WRIGHT: I don't either. 25 That's why I've got "eliminate" beside it. So we</p>	<p style="text-align: right;">Page 43</p> <p>1 do need the operator for the mowing machines.</p> <p>2 CHAIRMAN PHILLIPS: Uh-huh.</p> <p>3 Because I don't think it's addressed anywhere 4 else.</p> <p>5 MR. WRIGHT: So that's a Class C 6 operator?</p> <p>7 MS. MCGAURAN: It's a Class B 8 operator?</p> <p>9 MR. SUMMERS: The classification 10 Number 10 in our form is "Farm Tractor Operator" 11 or "Power Broom." So that's where the 12 Classification 10, we take care of all the people 13 doing all the mowing on the right-of-ways.</p> <p>14 MR. WRIGHT: Yes. There it is. 15 Okay. So we still want to strike paragraph 6 on 16 page 17, "Tractor Machine Operator" -- or, I mean, 17 no, paragraph 5, "Tractor Operator, 18 Crawler/Utility." Page 17.</p> <p>19 MR. BAILEY: So you're saying 20 delete that?</p> <p>21 MR. WRIGHT: Yes.</p> <p>22 CHAIRMAN PHILLIPS: So strike that 23 one?</p> <p>24 MR. SUMMERS: And I think Number 6, 25 also.</p>
<p style="text-align: right;">Page 44</p> <p>1 MR. WRIGHT: Yeah. Trenching 2 machine...</p> <p>3 MR. SUMMERS: Well --</p> <p>4 MR. WRIGHT: There's those big 5 chain trenchers.</p> <p>6 MR. SUMMERS: Yeah, don't do that 7 one.</p> <p>8 MR. WRIGHT: And I think that was 9 pretty much all I had, other than I didn't know 10 what a pile operator was. On page 19, "Drill 11 Operator, piling." What is...</p> <p>12 MS. MCGAURAN: Driving foundation 13 piles?</p> <p>14 MR. WRIGHT: I guess. It says 15 operates a drill mechanism --</p> <p>16 MR. SUMMERS: For driving pilings, 17 so...</p> <p>18 MR. WRIGHT: Okay. But --</p> <p>19 MR. SUMMERS: If you had a separate 20 machine rather than a crane to do that.</p> <p>21 MR. WRIGHT: Okay. That makes 22 sense.</p> <p>23 That was the end of my questions. 24 Thank you for your patience. 25 I would move to fix all of that.</p>	<p style="text-align: right;">Page 45</p> <p>1 CHAIRMAN PHILLIPS: Okay. What was 2 the last one, again? Stephen, what was the last 3 one?</p> <p>4 MR. WRIGHT: Oh, gosh. No, that 5 was just a question about -- there's no suggested 6 action.</p> <p>7 CHAIRMAN PHILLIPS: All right.</p> <p>8 MR. SUMMERS: All this is, is 9 getting the rule to reflect the same thing as our 10 survey form does, basically.</p> <p>11 CHAIRMAN PHILLIPS: Exactly.</p> <p>12 MR. BAILEY: Okay. So if I've got 13 all these noted correctly, you're going to 14 entertain a motion to delete, on page 15, under 15 Class A operator, in the introductory paragraph of 16 Class A operator, the words "Tractor," 17 parenthesis, "Crawler/Utility," parenthesis, 18 "Scraper, Shovel," and the words "or Trenching 19 Machine."</p> <p>20 MR. WRIGHT: Yes, sir.</p> <p>21 MR. BAILEY: And on page 16, small 22 Roman Numeral iii, your motion is to delete the 23 word "end" from the parenthesis, "end load 24 operator." 25 MR. WRIGHT: Yes, sir.</p>

<p style="text-align: right;">Page 46</p> <p>1 MR. BAILEY: And also to delete 2 Roman Number subparagraph iv just below that, 3 which is the definition for motor crane operator. 4 MR. WRIGHT: Yes, sir. 5 MR. BAILEY: And then in 6 paragraph 4, Class D operator, in the introductory 7 paragraph, again, delete the word "end" from "end 8 loader." And then in subparagraph Roman 9 Numeral i, eliminate the words "or push dozer 10 operator." 11 MR. SUMMERS: You could probably 12 delete "push dozer" in the description there, too. 13 MR. BAILEY: Oh, in the 14 introductory paragraph? 15 MR. SUMMERS: Yes, sir. 16 MR. BAILEY: All right. 17 CHAIRMAN PHILLIPS: Second to the 18 last. 19 MR. BAILEY: Okay. All right. And 20 then finally, on page 17, small Roman Numeral 21 paragraph v, delete that whole paragraph, which is 22 the definition for a Tractor Operator, 23 parenthesis, Crawler/Utility, end parenthesis. 24 MR. WRIGHT: Yes, sir. 25 MR. BAILEY: Okay. So that's your</p>	<p style="text-align: right;">Page 47</p> <p>1 motion? 2 MR. WRIGHT: Yes, sir. Well, and I 3 see one other thing I would like to bring up. In 4 Class -- the paragraph -- the entry -- the 5 beginning paragraph iv, it does say end loader, 6 and we talked about striking "end loader less than 7 three yards." If you read through all of the 8 definitions in Class B, there is no definition for 9 that. See, it only has bulldozer; motor patrol 10 operator; scraper operator; the shovel operator, 11 the one we're eliminating; and trenching machine 12 operator. Then it goes to Class C and introduces 13 those. 14 So I would think the Department 15 either needs to write a paragraph for a loader 16 less than three yards -- and I'm looking over here 17 to my left to see -- do we want a big loader and a 18 little loader like we have a big crane and a 19 little crane? Because -- 20 MR. SUMMERS: Well, since you say 21 that, we talked about another Class A operator, 22 end loaders three yards or over. But then under 23 the Class A operator, where it says "Loader 24 operator," it doesn't require it to be three yards 25 or over. So it should.</p>
<p style="text-align: right;">Page 48</p> <p>1 MR. WRIGHT: It should, yes. I'm 2 wondering we need to correct this just like we did 3 the crane, to have a big and a little. 4 MR. SUMMERS: Under your 5 definition, under Class A operator, it says, "End 6 loader" -- or "loader, three yards and over." But 7 when you go to iii, it just says "loader 8 operator," and it doesn't reference the size. 9 MR. WRIGHT: Which would be the 10 first paragraph on page 16. When we remove "end," 11 it would probably need a parenthesis that says 12 "three yards and larger" or "larger than three 13 yards," whichever is appropriate. 14 MR. CRABTREE: Is there that much 15 difference in operating those two? 16 MR. WRIGHT: Yeah, there really is, 17 because, you know, the little guy is feeding the 18 asphalt plant, and the other guy is running a 19 million-and-a-half dollar machine, loading 20 hundred-ton rock trucks. Is that fair? 21 MR. SUMMERS: Yeah. So under 22 Class B operator, you would -- 23 MR. WRIGHT: Which would be your 24 asphalt loader guy. 25 MR. SUMMERS: You would put that</p>	<p style="text-align: right;">Page 49</p> <p>1 loader operator, exactly the same definition down 2 there, except it would say less than three yards. 3 MR. WRIGHT: So you would need to 4 copy the paragraph iii down into the Class B. 5 MR. BAILEY: Okay. So continuing 6 on, your motion, then, would also add the words 7 under subparagraph Roman Numeral iii, under 8 Class A operator, "Loader operator," parenthesis, 9 "larger than three yards," parenthesis. 10 MR. WRIGHT: Yes, sir. 11 MR. BAILEY: And then under Class B 12 operator, add a paragraph to define "loader," 13 parenthesis, "less than three yards" under Class B 14 operator, which would be a new Roman Numeral -- a 15 small Roman Number vii. 16 MR. WRIGHT: Yes, sir. 17 MR. BAILEY: And basically, it's 18 the same definition as "loader operator" under 19 Class A operator, but less than three yards. 20 MR. WRIGHT: Yes, sir. I think 21 that's our intent. 22 MR. BAILEY: Okay. So all of that 23 is the motion. 24 MS. MCGAURAN: I'll second the 25 motion.</p>

<p style="text-align: right;">Page 50</p> <p>1 CHAIRMAN PHILLIPS: Does anybody 2 really have that motion? 3 MR. WRIGHT: Yeah, I'll make that 4 motion. 5 MS. MCGAURAN: And I'll second it. 6 MR. WRIGHT: I can't recant it. 7 CHAIRMAN PHILLIPS: And I hope we 8 don't have any more discussion on it. 9 MR. WRIGHT: We're good. 10 CHAIRMAN PHILLIPS: All in favor? 11 (Affirmative response.) 12 CHAIRMAN PHILLIPS: Motion carries. 13 MS. MCGAURAN: And I want to make 14 one more motion. I know that we previously 15 approved the survey letter and the form, but I 16 would like to move that staff be allowed to update 17 the survey letter and form to reflect any of the 18 changes that we just made to the document itself. 19 MR. WRIGHT: Second. 20 CHAIRMAN PHILLIPS: Any discussion? 21 (No verbal response.) 22 CHAIRMAN PHILLIPS: Everybody in 23 favor, say "aye." 24 (Affirmative response.) 25 CHAIRMAN PHILLIPS: Carries.</p>	<p style="text-align: right;">Page 51</p> <p>1 That's good, Ann. Good catch there. 2 Okay. So we don't need to have a 3 motion to approve what we just approved, right? 4 MS. JEFFERSON: We're done. 5 CHAIRMAN PHILLIPS: We're done with 6 that one. 7 MR. SUMMERS: I have one question. 8 On page 27, here, we're codifying a pattern of 9 behavior that the Prevailing Wage Commission has 10 followed, more or less, over a number of years. 11 All of that is within the 6 percent up or down 12 that we have. Do we need to codify that pattern 13 of behavior? It's not a rule. It's just 14 something that we have done to even out cyclical 15 things that are -- sometimes there's been some 16 data in that we think we can't exclude, but it's 17 not indicative of what goes on in the industry. 18 But that Number 8 there in red 19 would -- it says it can adjust, according -- if 20 that means we don't have to, then I'm okay with 21 it. But if this is going to -- 22 CHAIRMAN PHILLIPS: If it said 23 "will," that would be different. But it says 24 "can." 25 MR. SUMMERS: So "can" -- I mean,</p>
<p style="text-align: right;">Page 52</p> <p>1 the commission could disregard this and do 2 something different -- 3 MS. JEFFERSON: Yes. 4 MR. SUMMERS: -- is that correct? 5 MS. JEFFERSON: Yes. You can 6 adjust according to these guidelines. Yes, those 7 are discretionary, is the way I understand it. 8 MR. WRIGHT: This is helpful to me, 9 Rab, because you're the only one that knows the 10 rules. 11 MS. MCGAURAN: So those are -- so 12 what we're doing is -- so just to make sure, what 13 we're doing is we're codifying the guidelines, 14 suggested norms? 15 MS. JEFFERSON: Yes. Being from 16 what I understand, that's -- is that a 17 requirement, Jan, their five, or is that just 18 discretionary based on the history of the 19 commission? 20 MS. CAUDILL: On the one less than 21 five, that's the one that's stated in the law. 22 MS. JEFFERSON: That's stated in the 23 law. That's -- 24 MS. CAUDILL: That's the only one 25 that's stated in the law.</p>	<p style="text-align: right;">Page 53</p> <p>1 MS. JEFFERSON: But the others are 2 discretionary. And mainly, this is being placed 3 in the rules because we receive questions from 4 time to time, and we have to explain 5 justification, as to why we're doing things. And, 6 say, if any of you were to leave and we're not 7 here to explain, then we would have something to 8 fall back on. Right now, we don't have anything 9 to fall back on. So that's why we were proposing 10 to include those things. 11 CHAIRMAN PHILLIPS: "A" is the only 12 one that's really codified. The other two -- no? 13 MS. CAUDILL: "B." 14 CHAIRMAN PHILLIPS: Oh, excuse me. 15 Yes. "B" is the only one that's codified. The 16 others give us discretion under this. 17 MS. MCGAURAN: Would it make sense, 18 then, for "A" and "C" to change the word "will" in 19 those statements to "may"? 20 "The prevailing wage rate may be set 21 at survey. The prevailing wage rate may be set at 22 plus or minus," instead of "will." So that, then, 23 the one in the middle says you "will," and the 24 other ones say you "may." 25 CHAIRMAN PHILLIPS: Yes.</p>

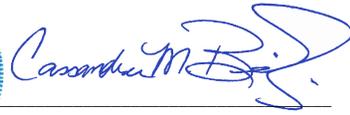
<p style="text-align: right;">Page 54</p> <p>1 MR. BAILEY: Well, this is also 2 covered in the statute. So to kind of follow up 3 with what you were saying, I mean, if it's in the 4 statute, it kind of calls into question do you 5 need to put it in the rules. 6 MS. JEFFERSON: Is all of it in the 7 statute? 8 MR. BAILEY: 6 percent is in the 9 statute. It says that the commission, if it 10 ascertains a certain economic condition, can 11 adjust the final wage for determination as 12 developed by the documentation certified to the 13 commission by adding to or subtracting from the 14 determination a percentage factor of not more than 15 6 percent based on the previous years' prevailing 16 wage rate. Such determination shall be effective 17 until the next determination of the prevailing 18 wage rate pursuant to the terms hereof unless 19 herein otherwise specifically provided. And 20 then -- 21 MS. JEFFERSON: And see, that refers 22 to the 6 percent, which we know is in the law. So 23 we're not disputing that. The A is referring to 24 15 percent. And actually, C is referring to 10 to 25 15 percent. Those are different than what's in</p>	<p style="text-align: right;">Page 55</p> <p>1 the code. 2 B is in the code. We just put that 3 in because that was -- actually, there were four 4 factors that were considered. One was outdated. 5 We talked with Mr. Summers about that, when it was 6 outdated, so we went ahead and deleted that. 7 However, the other three -- all three of these 8 were used historically. 9 So as Ann suggested, we can leave A 10 and C in the rules with the understanding that 11 they are discretionary and use the discretionary 12 word; whereas, B would be -- since it's in the 13 law -- Dan, you saw that in the law? 14 MR. BAILEY: I would have to 15 confirm that. 16 MS. JEFFERSON: Was that in the 17 law, Jan? I know it's in the rule. But I think 18 we would just include that. It was previously in 19 the rule, the way I understand it. 20 MR. SUMMERS: I don't think there 21 was a requirement. What you do when you have 22 insufficient data -- I think the insufficient data 23 was thrown out, and then the commission had the 24 right to keep it the same as last year, increase 25 it by the state average, or do anything,</p>
<p style="text-align: right;">Page 56</p> <p>1 basically, within the 6 percent. 2 MS. JEFFERSON: Okay. I can't 3 remember if I actually saw that in the rules. For 4 some reason, I thought I saw that in the rules. 5 I'll have to lean on the Labor Standards Unit to 6 verify the original rules to make that 7 determination. But it just makes it a little 8 easier for us when it comes time for audits, 9 because we have to justify why we do what we do. 10 And if we don't have documentation somewhere to 11 justify it, it's going to cause problems for us. 12 So that's why we suggested just laying out 13 everything and describing it. 14 CHAIRMAN PHILLIPS: So would it not 15 be resolved just by changing the word -- two words 16 so that it's discretionary rather than -- 17 MS. JEFFERSON: Yes, for A and B. 18 A and B would be discretionary. 19 CHAIRMAN PHILLIPS: Yeah, for A and 20 B. 21 MS. JEFFERSON: A and B would be 22 discretionary. 23 MS. CAUDILL: A and C. 24 CHAIRMAN PHILLIPS: I mean A and C. 25 MS. JEFFERSON: A and C, I'm sorry.</p>	<p style="text-align: right;">Page 57</p> <p>1 CHAIRMAN PHILLIPS: Yeah, B is in 2 the statute. 3 MS. JEFFERSON: Is B in the statute? 4 I don't have that in front of me. 5 MR. SUMMERS: The reason for this 6 rule is called a might fits rule. When there were 7 13 different prevailing wages across the state for 8 the building trades, there were 13 different 9 regions from Memphis to East Tennessee. And you 10 would get 20 percent fluctuations up and down, 11 just all the time, and we tried to -- and Mike 12 came up with this method of trying to smooth out 13 the ups and downs within the commission of 14 6 percent. Because when the prevailing wage was 15 building, we got really inaccurate data, really 16 inaccurate data. 17 MR. CRABTREE: So do we still need 18 it? If we're getting good data now, do we still 19 need that breakdown? 20 MR. SUMMERS: Personally, I don't 21 think so. Personally, I think that the commission 22 has the right to go up or down 6 percent. 23 This was in response to some 24 complaints by some of the union people to have a 25 pattern of why you're doing what you do. So Mike</p>

<p style="text-align: right;">Page 58</p> <p>1 came up with this formula to have a pattern for 2 our behavior on the building trade side. 3 We get excellent data on the highway 4 side. We know we do. There's no problem with our 5 data. And I don't know that we need them, but... 6 MR. WRIGHT: If we don't need them, 7 why do we have them? 8 MS. JEFFERSON: But if we don't 9 have anything, we would have to use -- we could 10 only do plus six or minus six. We couldn't ever 11 do anything different, because that would cause 12 problems as far as auditing. As long as we're 13 aware of that, then I'm okay with that. But 14 whatever the commission decides. 15 MR. WRIGHT: You mean greater or 16 less than 6 percent. 17 MS. JEFFERSON: Greater or less 18 than 6. We would be bound by that. We wouldn't 19 be able to make any type of adjustments, because 20 if we don't have anything to fall back on and 21 justify why you're doing something different than 22 what the law requires, it causes problems. So as 23 long as -- 24 CHAIRMAN PHILLIPS: Particularly 25 with the auditors.</p>	<p style="text-align: right;">Page 59</p> <p>1 MS. JEFFERSON: Yes. 2 MR. SUMMERS: You're saying that if 3 some commission decided that one rate was way too 4 high and they decreased it and didn't decrease the 5 others, then the auditor would question our 6 judgment and -- 7 MS. JEFFERSON: Well, they would 8 question the calculation. 9 MR. SUMMERS: Okay. 10 MS. JEFFERSON: Not so much the 11 judgment, but the calculation while we decide to 12 do something different than what the law 13 prescribes. So as long as we're -- as long as 14 there's an agreement that we're just going to do 15 plus and minus going forward, then we could do 16 that. But if we -- I don't know -- Jan is looking 17 at me because we're having to calculate -- 18 MS. CAUDILL: No. I thought the 19 law trumped. 20 MS. JEFFERSON: It does. 21 MR. BAILEY: It does. I mean -- 22 MS. CAUDILL: So if you can only 23 move plus or minus 6 percent, per the law -- 24 MR. BAILEY: That's all you can do. 25 MS. CAUDILL: -- why have anything</p>
<p style="text-align: right;">Page 60</p> <p>1 else, if that is what it is. 2 MR. WRIGHT: We can just refer the 3 auditor to the law. 4 MS. CAUDILL: Right. Well, they 5 referred us to the law. 6 MR. WRIGHT: Now you can refer 7 them. 8 MS. CAUDILL: But if that's all you 9 can do, then why have these -- 10 CHAIRMAN PHILLIPS: That doesn't 11 always work. I can tell you. 12 MS. CAUDILL: I think it causes 13 more confusion, myself. 14 MR. SUMMERS: Are you saying 15 that -- 16 MR. CRABTREE: I kind of tend to 17 agree. 18 MR. SUMMERS: Are you saying that 19 if there was one rate that went up 15 percent, and 20 all the other rates went up 3, 4, 5. And we said, 21 well, this one goes up 15 percent, 1/2 percent of 22 this calculation, we just say that's too high. 23 MS. JEFFERSON: If you did 24 something outside of that plus or minus -- 25 MR. SUMMERS: Well, no, we wouldn't</p>	<p style="text-align: right;">Page 61</p> <p>1 go outside the plus or minus. We'd say that 2 15 percent, that's got to go down 6. 3 MS. JEFFERSON: Right. Well, as 4 long as it's not outside of the plus or minus 5 range, then it's okay. But if we tended to do 6 something a little different because the economic 7 conditions required, based on just looking at the 8 rates and saying, well, this is too high. This is 9 way too high so I'm going to do something maybe 10 plus 8 -- 11 MR. SUMMERS: Oh, no. 12 MS. JEFFERSON: -- then that would 13 cause a problem. 14 MR. SUMMERS: We can't do that. 15 MR. BAILEY: We can't do that. 16 MR. SUMMERS: And this is all 17 within 6 percent. 18 MR. BAILEY: Yeah. And that was 19 corrected. 20 MS. JEFFERSON: Yes, it was 21 corrected. 22 MR. BAILEY: Yeah. Because that 23 law won't allow them to do that. But, I mean, you 24 know, they can't do that. 25 MR. WRIGHT: Well, if that's the</p>

<p style="text-align: right;">Page 62</p> <p>1 case, we need to change "will" to "may" in B as 2 well.</p> <p>3 MS. JEFFERSON: We can do that, just 4 change that to "may" and leave it there.</p> <p>5 MR. WRIGHT: Or just eliminate it 6 altogether.</p> <p>7 MS. JEFFERSON: Yes.</p> <p>8 MR. WRIGHT: Which would be my 9 first choice.</p> <p>10 MS. MCGAURAN: I guess my question 11 is, Kim, is your assertion that adding this to our 12 rules gives the commission more flexibility rather 13 than less flexibility?</p> <p>14 MS. JEFFERSON: Yes. Because if the 15 law -- I know if the law says one thing, it does 16 trump; however, these notes, in the past, they've 17 been used anyway, historically, long before any of 18 us, you know, were here, that these notes were 19 used, despite what the law said. And we tried to 20 justify that based on rates that had been 21 proposed.</p> <p>22 Some of the rates were plus 8 percent 23 or plus whatever. They were outside that plus-6 24 or minus-6 range. And that's -- that caused 25 problems for us, and that's why we had a special</p>	<p style="text-align: right;">Page 63</p> <p>1 meeting --</p> <p>2 CHAIRMAN PHILLIPS: With the 3 comptroller.</p> <p>4 MS. JEFFERSON: -- this past -- 5 actually, earlier on. And we just want to make 6 sure, going forward, that doesn't happen again.</p> <p>7 But whatever you-all propose, if we 8 wanted, just use the law, what the law states, 9 then we can eliminate these, and we can proceed 10 based on what the law states without any 11 exceptions, plus or minus.</p> <p>12 CHAIRMAN PHILLIPS: But then you 13 don't have any flexibility. Do you want 14 flexibility, or do you not?</p> <p>15 MR. SUMMERS: Well, this doesn't 16 give any more flexibility. And we've always tried 17 to stay within the 6 percent. I think, at times, 18 our arithmetic has gotten off, and I don't think 19 there was ever an intent to get outside the 20 6 percent, but there was just some arithmetic.</p> <p>21 I don't see where this --</p> <p>22 MR. WRIGHT: Helps anything?</p> <p>23 MR. SUMMERS: -- helps anyone.</p> <p>24 MS. WRIGHT: Well, let's move to 25 strike.</p>
<p style="text-align: right;">Page 64</p> <p>1 MS. MCGAURAN: Can I -- I just want 2 to clarify one thing. So it appears to me that 3 what this says is that we can use the state survey 4 rate as the baseline versus the prior annual rate 5 as the baseline for our plus or minus 6 percent. 6 If the survey rate shows an increase or a decrease 7 of more than 15 percent over the previous years' 8 prevailing wage rate, then the new prevailing wage 9 rate would be set at the survey rate. So you take 10 the survey rate, where people are responding with 11 a plus or a minus to what you were hearing is the 12 rates. In the absence of this rule, do we have to 13 go by -- so say our previous year's rate was \$15, 14 and the people are paying \$20 an hour, then it 15 appears that we could take the \$20 and do plus or 16 minus 6, do we still have to use -- or do we 17 always have to use the 15?</p> <p>18 MR. CRABTREE: I think it says the 19 determination, which is the current year's survey 20 rate --</p> <p>21 MS. JEFFERSON: Yeah, the current 22 year's rate, we would always use that as a basis.</p> <p>23 MR. SUMMERS: Where we got messed 24 up last year is we were using -- we were going off 25 the survey rate, as you're talking about. But the</p>	<p style="text-align: right;">Page 65</p> <p>1 6 percent, am I correct, that it's off last 2 year's -- if you take last year's prevailing wage, 3 plus or minus 6 percent, is our --</p> <p>4 MS. CAUDILL: Well, it's 6 percent 5 of the current rate. Whatever the current rate 6 is, you take 6 percent of that. Then you can add 7 or subtract that to the survey rate.</p> <p>8 MR. SUMMERS: Correct.</p> <p>9 MS. CAUDILL: That's what's in the 10 law.</p> <p>11 MR. STARWALT: Well, I'll be glad 12 to read the law.</p> <p>13 CHAIRMAN PHILLIPS: Yes, go ahead, 14 Kent.</p> <p>15 MR. STARWALT: It says -- there's 16 language before it, but it says, "The commission, 17 if it ascertains the current economic conditions 18 warrant, can adjust the final wage determination 19 as developed by the documentation certified to the 20 commission by adding to or subtracting from the 21 determination a percentage factor of not more than 22 6 percent based on the previous year's prevailing 23 wage rates. Such determination shall be effective 24 until the next determination."</p> <p>25 MR. SUMMERS: So in your example,</p>

<p style="text-align: right;">Page 66</p> <p>1 if the current rate was \$15 an hour and it comes 2 in at 20, we could take 6 percent of the 15, or 3 0.90 and take it off the 20, and that's all we can 4 do. And that's all we can do in here. 5 MS. MCGAURAN: Okay. 6 MR. SUMMERS: There's no 7 difference. 8 MS. JEFFERSON: And, also -- 9 MS. MCGAURAN: That answers my 10 question. Thank you. 11 MS. JEFFERSON: Yes. As far as B is 12 concerned, we, pretty much -- if there are 13 insufficient survey responses, less than 5, we 14 generally don't use those. So if we get rid of 15 that, we won't be doing that going forward either, 16 because that's not in the law. 17 MS. CAUDILL: That was the only one 18 we considered keeping. 19 MS. JEFFERSON: I believe those 20 were in the rules previously. So that's been in 21 the rules. B has been in the rules. 22 MS. CAUDILL: And the only way we 23 changed that was by plus or minus the state 24 average, as long as it wasn't more than 6 percent. 25 Because you're going to be working -- if there's</p>	<p style="text-align: right;">Page 67</p> <p>1 no responses, you're going to be working off of 2 the current year's rate anyway. And as long as 3 the state average isn't more than 6 percent, 4 you're still within the law. 5 MR. SUMMERS: I don't have a 6 problem keeping B if that gives you a problem with 7 the auditors, if we just arbitrarily do something 8 there. That's not as significant. That's not a 9 significant thing. 10 MS. JEFFERSON: That's fine. 11 MR. CRABTREE: I think there ought 12 to be a minimum. I don't know if four is the 13 right minimum or not. It should be less than 14 five, so it has to be four. 15 MR. BAILEY: The current rule says 16 if any classification of a craft listed -- this is 17 on the prevailing wage survey form, where four or 18 fewer responses are received, these responses may 19 be excluded from establishing the rates. Where 20 the data is excluded, the commission may continue 21 the rate in existence since the time of survey or 22 adjust it pursuant to @TCA 12-4-405(4). That's 23 the current rule. 24 MR. SUMMERS: How do you interpret 25 four responses? Do you interpret four responses</p>
<p style="text-align: right;">Page 68</p> <p>1 as four different companies responding, or one 2 company responding on four different projects? 3 MS. CAUDILL: The way it interprets 4 it right now, we do four different companies. 5 MR. SUMMERS: That's the way I -- I 6 think it should be. 7 MS. CAUDILL: Because they're -- 8 yes. 9 MR. SUMMERS: Yes. 10 CHAIRMAN PHILLIPS: So does anybody 11 know where we are? 12 MR. SUMMERS: Well, if you want, we 13 can take a motion. Under Number 8, I would just 14 remove everything except B, and I would say if 15 there are insufficient survey responses, less than 16 five companies -- 17 MR. BAILEY: May I interject? 18 MR. SUMMERS: Sure. 19 MR. BAILEY: If you look at the 20 paragraph just above it, Number 7 -- 21 MR. SUMMERS: Yeah. 22 MR. BAILEY: -- it covers B. That 23 is the current language. 24 CHAIRMAN PHILLIPS: Well, you're 25 right. It does.</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. BAILEY: So you don't need 2 Number 8. 3 MS. MCGAURAN: So strike 8 in its 4 entirety? 5 CHAIRMAN PHILLIPS: Strike 8. 6 MR. SUMMERS: Can we put in for 7 fewer separate companies? So there's always, sort 8 of, a -- to make sure that one company can't put 9 in five or six jobs, and then all of a sudden 10 they're setting the prevailing wage for the state. 11 MR. WRIGHT: Is there a definition 12 section? 13 CHAIRMAN PHILLIPS: Jan said that 14 it was companies. 15 Where did you get that? 16 MS. CAUDILL: That's just part of 17 the survey. When the responses come in, the 18 responses are referred to per company. 19 MS. JEFFERSON: It's just based on 20 the way we currently do it. 21 CHAIRMAN PHILLIPS: Okay. 22 MR. BAILEY: So does the company 23 send more than one survey? 24 MR. SUMMERS: Oh, yeah. 25 MS. CAUDILL: They can. They can</p>

<p style="text-align: right;">Page 70</p> <p>1 have several projects.</p> <p>2 MR. SUMMERS: Yeah. We send in</p> <p>3 multiple --</p> <p>4 MS. CAUDILL: We've had more than</p> <p>5 40 or 50, yeah.</p> <p>6 MR. SUMMERS: Most of the major</p> <p>7 firms will send in, I don't know, 15 or 20</p> <p>8 different surveys on different projects. Because</p> <p>9 we have to detail the project that it's on and say</p> <p>10 we have so many hours on this project...</p> <p>11 MR. BAILEY: So you're wanting</p> <p>12 there to at least be four surveys from four</p> <p>13 different companies.</p> <p>14 MR. SUMMERS: Surveys from four</p> <p>15 different companies, yes, sir, to make sure we</p> <p>16 don't have any confusion.</p> <p>17 MR. BAILEY: So would we just want</p> <p>18 to add the word "company" between the words</p> <p>19 "fewer" and "separate"?</p> <p>20 MR. SUMMERS: However you want to</p> <p>21 do it, but just -- I mean, I'd like to have</p> <p>22 "companies" in there some way.</p> <p>23 MR. BAILEY: Fewer companies,</p> <p>24 separate. Or maybe --</p> <p>25 MS. CAUDILL: Or take out "survey."</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. BAILEY: I'm sorry. It</p> <p>2 probably should go between separate and survey, or</p> <p>3 "four or fewer separate company survey responses</p> <p>4 are received." Does that sound right?</p> <p>5 CHAIRMAN PHILLIPS: Yes, sir.</p> <p>6 Wouldn't you want to take out "separate"?</p> <p>7 MR. BAILEY: Yeah, just "company."</p> <p>8 Take out "separate" and just say "company." There</p> <p>9 you go.</p> <p>10 MR. CRABTREE: You might want to</p> <p>11 add something like "unaffiliated" in there also,</p> <p>12 because we have -- this gets more complicated, but</p> <p>13 we have companies that have two or three different</p> <p>14 companies, and --</p> <p>15 MR. BAILEY: Subsidiaries.</p> <p>16 MR. CRABTREE: -- they're all the</p> <p>17 same company, but --</p> <p>18 MR. BAILEY: No, I understand,</p> <p>19 because --</p> <p>20 CHAIRMAN PHILLIPS: Well, that's a</p> <p>21 good point.</p> <p>22 MR. CRABTREE: But they have to be</p> <p>23 affiliated. In order for us to prequalify them</p> <p>24 separately, they have to acknowledge that they're</p> <p>25 affiliated.</p>
<p style="text-align: right;">Page 72</p> <p>1 MR. BAILEY: So four or fewer</p> <p>2 unaffiliated companies --</p> <p>3 MR. CRABTREE: That may not be the</p> <p>4 best choice of words, but it would keep Wright</p> <p>5 Brothers, Inc. and Wright Brothers, LLC from</p> <p>6 submitting the same data whenever they're the same</p> <p>7 company.</p> <p>8 MR. BAILEY: Just tell me the words</p> <p>9 you want me to put.</p> <p>10 MR. CRABTREE: "Unaffiliated" is</p> <p>11 the word that we use, but there may be a better</p> <p>12 word. I don't know.</p> <p>13 MR. SUMMERS: You could say "four</p> <p>14 or fewer survey responses from unaffiliated</p> <p>15 companies are received."</p> <p>16 CHAIRMAN PHILLIPS: Just say "four</p> <p>17 or fewer nonaffiliated company survey responses."</p> <p>18 Do we have a motion?</p> <p>19 MR. BAILEY: No.</p> <p>20 MS. MCGAURAN: I would move to</p> <p>21 modify the language in Number 7 on page 27 and</p> <p>22 strike Number 8 on page 27, as discussed.</p> <p>23 CHAIRMAN PHILLIPS: As discussed.</p> <p>24 Do I hear a second?</p> <p>25 MR. CRABTREE: Second.</p>	<p style="text-align: right;">Page 73</p> <p>1 CHAIRMAN PHILLIPS: Any other</p> <p>2 discussion?</p> <p>3 (No verbal response.)</p> <p>4 CHAIRMAN PHILLIPS: If there's no</p> <p>5 other discussion, all in favor?</p> <p>6 (Affirmative response.)</p> <p>7 CHAIRMAN PHILLIPS: Motion carries.</p> <p>8 MR. WRIGHT: This is the greatest</p> <p>9 rewrite of the rules in 45 years.</p> <p>10 CHAIRMAN PHILLIPS: Any other</p> <p>11 discussion items from any members of the</p> <p>12 commission?</p> <p>13 (No verbal response.)</p> <p>14 CHAIRMAN PHILLIPS: Now, the next</p> <p>15 meeting will be held at 1:30 p.m. on Friday,</p> <p>16 November 16th, 2018, at the Tennessee Department</p> <p>17 of Labor and Workforce Development.</p> <p>18 An additional meeting date, Thursday,</p> <p>19 November 29th at 1:30. Is that right?</p> <p>20 MS. JEFFERSON: Yes.</p> <p>21 CHAIRMAN PHILLIPS: Okay. Does</p> <p>22 everyone got that?</p> <p>23 MR. WRIGHT: I have it now.</p> <p>24 CHAIRMAN PHILLIPS: Do we have a</p> <p>25 motion?</p>

<p style="text-align: right;">Page 74</p> <p>1 MS. MCGAURAN: I move adjournment. 2 MR. WRIGHT: Second. 3 CHAIRMAN PHILLIPS: Motion to 4 adjourn and second. All in favor. 5 (Affirmative response.) 6 CHAIRMAN PHILLIPS: We're 7 adjourned. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">END OF PROCEEDINGS.</p>	<p style="text-align: right;">Page 75</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1 2 STATE OF TENNESSEE) 3 COUNTY OF WILLIAMSON) 4 5 6 I, Cassandra M. Beiling, a Notary Public 7 in the State of Tennessee, do hereby certify: 8 9 That the within is a true and accurate 10 transcript of the Prevailing Wage Commission 11 Meeting taken on the 14th day of August, 2018. 12 13 I further certify that I am not related to 14 any of the parties to this action, by blood or 15 marriage, and that I am in no way interested in 16 the outcome of this matter. 17 18 IN WITNESS WHEREOF, I have hereunto set my 19 hand this 28th day of September, 2018. 20 21 22   23 Cassandra M. Beiling, CCR, LCR# 371 24 Notary Public State at Large 25 My commission expires: 3/15/2020</p>

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